Supreme Court, U.S.
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No.95-_____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

DONALD WILLIAMS, and wife
JANIE WILLIAMS,
and TERESA WILLIAMS by
next friends, DONALD WILLIAMS
and JANIE WILLIAMS,

Petitioner,

v.

DEBBIE POLLARD, and the TENNESSEE
DEPARTMENT OF HUMAN SERVICES

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

DAVID DAY
Counsel of Record
19 South Jefferson Avenue
Cookeville, Tennessee 38501
(615) 528-7002

Attorney for Petitioner

May 15, 1995

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QUESTIONS PRESENTED

A. After a social worker's investigation and initial interview with a minor showed no abuse, no emergency situation and no other basis for detention, can the social worker continue to detain the child against the expressed wishes of her parents and still claim qualified immunity?

B. May a social worker claim qualified immunity when retaining custody of a minor child for an indefinite and unspecified length of time based on second hand, unsubstantiated reports of abuse after the initial interview with the minor child shows no wrongdoing by the parents?

C. May a social worker constitutionally deny a detained minor child the right to contact her parents after requests were made by the child?

D. Must a social worker immediately advise a parent of the child's detention and whereabouts if she intends to interfere with the parental rights relative to that child?

E. If a social worker has qualified immunity for conducting a brief, preliminary interview of a minor child which demonstrates no need for custody or detention, does the social worker continue to have that immunity for purposes of continued non-judicial custodial detention of the child after her investigation reveals no abuse, no emergency situation or other basis for detention?

F. Did the United States Sixth Circuit Court of Appeals improperly deny Petitioners the right to obtain declaratory and equitable relief concerning the wrongful conduct of a Tennessee Department of Human Services

social worker even if qualified immunity for monetary damages applied?

LISTING OF PARTIES

All parties involved in the appeal to the United States Court of Appeals for the Sixth Circuit are listed in the caption.

TABLE OF CONTENTS

		Page
QUESTION PRESENTED		i
LISTING OF PARTIES		ii
TABLE OF CONTENTS		iii
TABLE OF AUTHORITIES		iv
OPINION BELOW		1
JURISDICTION		1
CONSTITUTIONAL AND STATUTORY PROVISIONS		2
STATEMENT OF THE CASE		3
ARGUMENT		8
APPENDIX		i
A.	Opinion of the District Court for the Middle District of Tennessee	ii
B.	Opinion of the Court of Appeals for the Sixth Circuit	iii
C.	Order Denying Petition for Rehearing	viii
D.	Petition for Rehearing and Rehearing En Banc and Brief	ix
E.	Verbatim listing of Constitutional and statutory provisions	xix

TABLE OF AUTHORITIES

Cases	*Page(s)*
Achteroff v. Selvaggio, 886 F.2d 826 (6th Cir. 1989).	9
Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987)	9, 10, 20
Baker v. Racansky, 887 F.2d 183 (9th Cir. 1989).	9
Cecere v. City of New York, 967 F.2d 826 (2d Cir. 1992).	10, 11
Daugherty v. Campbell, 935 F.2d 780 (6th Cir. 1991)	23
Donald v. Polk County, 836 F.2d 376 (7th Cir. 1988).	10
Duchesne v. Sugarman, 566 F.2d 817 (2d Cir. 1977).	10
Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908)	23
Hooks v. Hooks, 771 F.2d 935 (6th Cir. 1985).	10
Hurlman v. Rice, 927 F.2d 74 (2nd Cir. 1991)	10
Jordan by Jordan v. Jackson, 15 F.3d 333, 343 (4th Cir. 1994)	10

Long v. Norris, 929 F.2d 1111 (6th Cir. 1991). 21

Mangaroo v. Nelson, 864 F.2d 1202 (5th Cir. 1989) 23, 24

Mitchell v. Forsyth, 472 U.S. 511, 105 S.Ct. 625, 86 L.Ed.2d 411 (1985). 1, 9

Ohio Civil Service Employees v. Seiter, 858 F.2d 1171 (6th Cir. 1988) 24

Rich v. City of Mayfield Heights, 955 F.2d 1092 (6th Cir. 1992) 1

Robison v. Via, 821 F.2d 913, 921 (2nd Cir. 1987). 9, 10

Tenenbaum v. Williams, 862 F.Supp. 962 (E.D.N.Y. 1994) 10

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 2889 (1968) 15

United Mineworkers v. Gibbs, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed. 218 (1966). 1

Wheaton v. Webb-Petett, 931 F.2d 613 (9th Cir. 1991) 23

Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989) 23

Williams v. Pollard, 44 F.3d 433 (6th Cir. 1995) 1, 10, 17

CONSTITUTIONAL PROVISIONS

U.S. Const., Amend. IV	3
U.S. Const., Amend XIV, Sec. 1	3

STATUTES

28 U.S.C. § 1254(1)	2
28 U.S.C. §1291	1
28 U.S.C. § 1331	1
28 U.S.C. § 1343(3), (4)	1
42 U.S.C. §1983	1, 2, 3, 6, 22
T.C.A. § 37-1-113	2, 20
T.C.A. § 37-1-115(a)(2)	2, 21
T.C.A. § 37-1-404(b).	2, 21

RULES

Rule 13	2
Rule 14.1(f)	3

OPINIONS BELOW

The district court's decision is not published, but is reproduced in the appendix to this Petition. The opinion for the Court of Appeals for the Sixth Circuit is reported as *Williams v. Pollard*, 44 F.3rd 433 (6th Cir. 1995), but makes no mention of the Petition to Rehear. The Petition for Rehearing and Order are also included in the appendix.

JURISDICTION

This action was filed in the United States District Court for the Middle District of Tennessee pursuant to 42 U.S.C. §1983 for alleged violation of constitutional rights. Jurisdiction was based upon 28 U.S.C. §§ 1331 and 1343(3) and (4). In addition, the Plaintiffs asserted pendent state law claims against Ms. Pollard for false imprisonment, assault and battery, defamation and intentional infliction of emotional distress. Jurisdiction for the pendent state claims was based upon the holding in *United Mineworkers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966).

The respondents appealed the district court's order entered on July 9, 1993, denying the Motion to Dismiss and/or Motion for Summary Judgment on the basis of immunity. A notice of appeal was filed on behalf of Debbie Pollard and the Tennessee Department of Human Services on July 20, 1993. Jurisdiction was based upon 28 U.S.C. §1291. The decision of the district court denying the Motion to Dismiss and/or Motion for Summary Judgment asserting qualified immunity was reviewable as a final order under the collateral order doctrine. *Mitchell v. Forsyth*, 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985); *Rich v. City of Mayfield Heights*, 955 F.2d 1092 (6th Cir. 1992). While the appeal was pending, Petitioner agreed to dismiss the pendent state law claims and any claims against the Tennessee Department of Human

Services. On January 25, 1995, the U.S. Court of Appeals for the Sixth Circuit rendered its decision and reversed the decision of the district court.

On February 3, 1995, Petitioner filed a Petition to Rehear because the Court of Appeal's overlooked or misapprehended: (a) the failure of Debbie Pollard and DHS to notify the parents or to allow the minor child to contact her parents; (b) the failure to release the minor child voluntarily to the Plaintiff parents at the jail after the interview disclosed no grounds for an emergency situation; and (c) the failure to remand the case for further proceedings, including the claim for declaratory and injunctive relief, rather than allowing summary judgment to terminate the case. The Court of Appeals denied this Petition to Rehear by its order dated March 9, 1995.

Petitioner timely filed the instant petition for writ of certiorari in accordance with Rule 13 of the Rules of this Court. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const., Amend IV.

U.S. Const., Amend. XIV, Sec. 1.

42 U.S.C. § 1983. Civil Action for Deprivation of Rights.

T.C.A. § 37-1-113. [Juvenile] Taking into custody--Grounds

T.C.A. § 37-1-115(a)(2). [Juvenile] Custody--Release to proper party--Warrant for custody.

T.C.A. § 37-1-404(b). [Juvenile] Retention of custody of child by hospital or physician--Protective custody.

Pursuant to Supreme Court Rule 14.1(f), these constitutional provisions and statutes are quoted verbatim in the appendix to this Petition.

STATEMENT OF THE CASE

Petitioners are Donald and Janie Williams, and their minor daughter, Teresa Williams. Teresa Williams is a student of the Alternative School in White County, Tennessee. Respondent, Debbie Pollard, is employed as a social worker for the Tennessee Department of Human Services. Petitioners brought this suit pursuant to 42 U.S.C. §1983, challenging the constitutionality of the control which Debbie Pollard imposed upon Teresa Williams during the evening of October 29, 1992 and interference with Donald and Janie Williams' constitutionally protected parental rights.

On October 29, 1992, Plaintiff Teresa Williams was persuaded by her cousin, Karen Lewis, to accompany Karen to the office of Michael Johnson, vice principal of the Alternative School in White County, Tennessee, whereupon Karen told Mr. Johnson that she was afraid to go home for fear that her father would discipline her for skipping school the previous day. After Ms. Sandra Sparkman, the school guidance counselor, interviewed the girls, Ms. Sparkman called the Tennessee Department of Human Services (hereinafter called "DHS"), told them that the two girls were possibly abused and was informed that one of their employees would be there shortly to investigate the matter. Because of the district court's order denying discovery, the true basis of Ms. Sparkman's understanding of the situation is unavailable.

The Court of Appeals relied on the unsubstantiated hearsay "report of abuse" from Ms. Sparkman to justify Ms. Pollard's initial detention and interview of the girls, as well as Ms. Pollard's continued detention after no evidence of an emergency situation existed.

Defendant Debbie Pollard, an employee of DHS, arrived at the Alternative School at approximately 3:47 p.m. As Ms. Pollard began talking to the girls, Teresa told her that she was not afraid to go home herself, but that she was afraid for Karen's safety. Teresa never told Ms. Pollard that she was afraid to go home. Furthermore, Teresa never informed Ms. Pollard, either directly or indirectly, that she had suffered abuse at the hands of her parents.

Upon Ms. Pollard's arrival, Teresa asked Ms. Pollard to call her parents and inform them of her whereabouts. Ms. Pollard refused to do so, despite Teresa's requests and the anxiety which resulted from this refusal. Ms. Pollard was also advised on three separate occasions by Vice Principal Michael Johnson to call the girls' parents, but she persisted in refusing to do so.

Teresa never informed Ms. Pollard of any episodes of abuse suffered at the hands of her parents, real or threatened, other than a statement made by her father that "he would rather see them both dead than have her ruin her life" made in reference to her activities with certain boys about a year before this incident. Upon examining Teresa, Ms. Pollard found no evidence of bruises or physical signs of abuse on Teresa's body. Ms. Pollard personally knew Mr. and Mrs. Williams, and had no reason to believe that the Williams would engage in the physical abuse of their daughter. In fact, Ms. Pollard had personally placed foster children in the Williams' care through the Department of Human Services.

Despite the absence of any evidence suggesting the abuse of Teresa Williams, Ms. Pollard continued to detain her at the school until well after 5:00 p.m. without notifying her parents or allowing her to call them. Furthermore, Ms. Pollard made no attempt to obtain a court order or to even contact a judge to receive judicial authority for her continued detention of Teresa.

Finally, at approximately 6:00 p.m. that evening, with the aid of Sparta police officers, Ms. Pollard took Karen and Teresa from the school to the White County Sheriff's Office. Upon arriving at the Sheriff's Office, Ms. Pollard encountered Plaintiffs Don and Janie Williams, Teresa's parents, who were at the station filing a missing persons report for Teresa.

Upon seeing Ms. Pollard with Teresa, Mr. Williams demanded that Ms. Pollard release Teresa and allow him to take her home. Ms. Pollard refused to do so, stating her desire to retain custody. This situation caused Mr. Williams to forcibly and physically remove Teresa from the grasp of Ms. Pollard's assistant, who was physically restraining Teresa at the direction of Ms. Pollard. Ms. Pollard demanded that the deputy sheriffs present aid her in preventing Mr. Williams from taking custody of Teresa, but they refused to do so, explaining that such action would exceed their authority. This episode caused Mrs. Williams to have a seizure which required her to be transported from the jail to the hospital by ambulance and be hospitalized.

After Mr. and Mrs. Williams forcibly regained custody of their daughter, Ms. Pollard took no further action to regain custody of Teresa--either that night or at any other time. Ms. Pollard also conducted no further investigation.

Plaintiffs/Petitioners, Donald Williams, Janie Williams and Teresa Williams, filed this action on January 29, 1993, pursuant to 42 U.S.C. §1983 for violation of Plaintiffs' constitutional and pendent state law rights claiming that Ms. Pollard interfered with their liberty interest in the custody and control of their child in a manner which violated their rights under the United States Constitution, and that Ms. Pollard's actions constituted false imprisonment, assault and battery, defamation and intentional infliction of emotional distress; and that the Tennessee Department of Human Services was liable for Ms Pollard's actions under the doctrine of *respondeat superior*. All pendent law claims were withdrawn on appeal by the Williams.

Defendants Debbie Pollard and the Tennessee Department of Human Services filed a Motion to Dismiss and/or Motion for Summary Judgment on March 2, 1993, claiming the complaint failed to state a claim for relief and that the Tennessee Department of Human Services and Debbie Pollard were entitled to immunity.

On July 9, 1993, the District Court entered an Order denying the Motion to Dismiss and/or Motion for Summary Judgment. No memorandum opinion was filed. A Notice of Appeal was filed on behalf of Defendants on July 20, 1993.

On January 25, 1995, the United States Court of Appeals for the Sixth Circuit reversed the district court's holding. In this opinion, the Court of Appeals ignored the real issues presented, and simply stated that Ms. Pollard retained custody of the child for a reasonable time. The Court of Appeals completely ignored: (a) the post-interview confrontation where Ms. Pollard caused the Williams to forcefully regain custody despite no evidence of an emergency situation; (b) the rights of the parents to know the whereabouts of their child; (c) the right of the minor

child to contact her parents; and (d) the right of the Williams to obtain declaratory and injunctive relief. A Petition for Rehearing was filed on February 3, 1995, but was denied.

ARGUMENT

I. THE UNITED STATES SUPREME COURT MUST ALLOW MINOR CHILDREN THEIR CONSTITUTION RIGHT TO CONTACT THEIR PARENTS UPON REQUEST WHEN DETAINED BY A GOVERNMENTAL AGENCY.

Although raised on appeal, the Court of Appeals refused or failed to address the important right of a minor child to contact his or her parents when detained or taken into custody by a governmental agency, such as the Tennessee Department of Human Services, particularly when the request is made by the minor child while in custody.

By overlooking this important right, the Court of Appeal's decision gives a juvenile criminal-- under his or her ***Miranda*** rights--more liberty than an innocent minor child in terms of notifying his or her parents. One of the rights complained of in this case is the refusal of Defendant Pollard to allow Plaintiff Teresa Williams to notify her parents when she made the requests. If Plaintiff Teresa Williams, as a minor charged with a juvenile offense, had made such a request, there is not doubt but that she would be allowed to contact her parents. It escapes reason that a child who is detained by virtue of an unsubstantiated hearsay claim of possible abuse--and who is found not to be abused--should be denied the same rights granted to a juvenile criminal.

There is no acceptable reason to interfere with a minor child who wants to contact his or her parent. There is no acceptable reason for allowing a Department of Human Services Worker to keep hidden from a parent their child's whereabouts. The Court of Appeal's decision should have addressed these issues and found that they were violated by

the Ms. Pollard regardless of her right to conduct an interview.

II. THE UNITED STATES SUPREME COURT MUST ESTABLISH THAT SOCIAL WORKERS CANNOT CONSTITUTIONALLY DETAIN A MINOR CHILDREN WHEN AN INITIAL INTERVIEW AND INVESTIGATION DEMONSTRATES NO GROUNDS FOR DETENTION.

The Plaintiffs do not contest that a social worker has the right to assert qualified immunity for actions properly taken in the scope of her employment under appropriate circumstances. E.g. *Mitchell v. Forsyth*, 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985); *Achteroff v. Selvaggio*, 886 F.2d 826, 831 (6th Cir. 1989). The facts, however, must justify that entitlement.

Defendant is entitled to summary judgment if she is able to:

> adduce sufficient facts [such] that no reasonable jury, looking at the evidence in the light most favorable to, and drawing all inferences most favorable to the plaintiffs, could conclude that it was objectively unreasonable for the defendant to believe that he was acting in a fashion that did not clearly violate an established federally protected right.

Robison v. Via, 821 F.2d 913, 921 (2nd Cir. 1987); *Anderson v. Creighton*, 483 U.S. 635, 639-40, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987).

The United States Court of Appeals for the Sixth Circuit properly stated that the Williams' liberty interests as parents in this case are clearly established constitutional

rights. *Williams v. Pollard*, 44 F.3d 433, 434 (6th Cir. 1995). It is equally well-established that the compromise of this clearly established constitutional right through the detention of a child without parental consent or a court order is only justified when the government official has a reasonable basis to believe that an emergency situation exists. *Jordan by Jordan v. Jackson*, 15 F.3d 333, 343 (4th Cir. 1994); *Cecere v. City of New York*, 967 F.2d 826, 829 (2d Cir. 1992); *Hurlman v. Rice*, 927 F.2d 74, 80 (2nd Cir. 1991); *Baker v. Racansky*, 887 F.2d 183, 188 (9th Cir. 1989); *Donald v. Polk County*, 836 F.2d 376, 380 (7th Cir. 1988); *Robison v. Via*, 821 F.2d 913, 921 (2nd Cir. 1987); *Hooks v. Hooks*, 771 F.2d 935, 942 (6th Cir. 1985); *Duchesne v. Sugarman*, 566 F.2d 817, 826 (2d Cir. 1977).

The Courts have also firmly established the definition of "emergency situation" as it applies to the non-judicial detention of children. *Cecere v. City of New York*, 967 F.2d 826, 829 (2d Cir. 1992); *Hurlman v. Rice*, 927 F.2d 74, 80 (2nd Cir. 1991); *Robison v. Via*, 821 F.2d 913, 921 (2nd Cir. 1987); *Tenenbaum v. Williams*, 862 F.Supp. 962, 970 (E.D.N.Y. 1994). "Emergency situation" has been defined as those instances where the child "is immediately threatened by harm, . . . where the child is left bereft of care and supervision, or where there is evidence of *serious, ongoing abuse* and the officials have some reason to fear *imminent* recurrence." *Cecere v. City of New York*, 967 F.2d 826, 829 (2nd Cir. 1992) (Emphasis added)

Every situation does not require specific delineation by a court as being emergency or non-emergency before it can be determined that an individual's "constitutional rights" have been violated. *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987). In *Anderson*, this Court stated that it was not necessary for the particular action in question to have been expressly declared unlawful by a previous decision in order to find that it was "clearly

established that the conduct violated the individual's constitutional rights," but instead stated that "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.*

The Sixth Circuit Court of Appeals failed to recognize and address the questions before it in this case. The question was whether a reasonable social worker could believe that an emergency situation existed sufficient to justify further non-judicial detention of the child when the original allegations of abuse were only made known to the social worker through second-hand hearsay and after an initial interview and physical examination produced absolutely no evidence of abuse from parents or any other emergency situation.

While these facts may have been sufficient to justify an initial examination and interview by Ms. Pollard, they are certainly inadequate to justify a finding that Teresa was "immediately threatened by harm, . . . left bereft of care and supervision", or that there was "evidence of serious ongoing abuse" with some reason to "fear *imminent* recurrence." *Cecere*, 967 F.2d at 829. This is especially important because Ms. Pollard knew Mr. & Mrs. Williams' background and dealings with DHS; Ms. Pollard developed no facts during her interview of Teresa; and Ms. Pollard conducted no further investigation following the confrontation at the jail.

This Court must state that a social worker cannot continue to detain a child solely on the basis of unsubstantiated hearsay which contradicts the facts developed during her investigation.

A. Lack of further investigation supports the conclusion of no emergency situation.

A social worker has the power to temporarily take custody of a child in order to determine whether an emergency situation exists which would justify detention of the child. However, once a preliminary examination reveals no evidence on which an objectively reasonable person could justify the finding of an emergency situation, any further detention of the children without parental consent or a court order becomes a violation of the parents' liberty interest in the custody of their children.

Ms. Pollard did not conduct any additional investigation beyond the initial interview of the two girls nor did she attempt to obtain court authority for custody of Teresa after Mr. and Mrs. Williams forcefully and physically regained custody of their daughter. Except for one telephone call received on the day following the incident, the Williams have not heard anything from Ms. Pollard or the Department of Human Services. This lack of further investigation or attempt for a court order leads to the singular conclusion that Ms. Pollard's initial interview did not produce enough evidence to even justify a further investigation. It certainly follows that her investigation did not provide enough evidence to allow a reasonable person to conclude that an emergency situation existed.

By her own admission, Ms. Pollard's interview and examination of Teresa and the other girl, Karen Williams, lasted for only ***thirty minutes***. At that point, Ms. Pollard had no evidence to justify a finding that an emergency situation existed sufficient to justify the continued non-judicial detention of Teresa Williams. Despite the non-emergency situation, Ms. Pollard refused to call Teresa's parents and would not allow Teresa to do so. She also made no effort to contact a judge in order to obtain a court

order allowing her to detain Teresa. Instead, Ms. Pollard took the law into her own hands, despite the fact that a non-emergency situation simply did not exist.

B. Ms. Pollard's forcible detention of Teresa also constituted a violation of Petitioner's constitutional rights for which she has no qualified immunity.

After her interview showed no basis for continued detention, Ms. Pollard's order directing her assistant to forcibly restrain Teresa and requiring Mr. Williams to use force in removing her, also constitutes an interference with the parental rights. In its decision, the Sixth Circuit completely ignored these rights.

Upon seeing Teresa with Ms. Pollard, Mr. Williams asked her to come to him. When Teresa attempted to do so, she was forcibly and physically restrained by Ms. Pollard's assistant at Ms. Pollard's direction. Mr. Williams was forced to physically remove Teresa from the assistant's grasp over Ms. Pollard's objection and demand for further interference by deputy sheriffs.

An objectively reasonable person in the same situation would have realized that such conduct violated clearly established laws. This is evidenced by the fact that the deputy sheriffs present told Ms. Pollard that they did not have the authority to assist her in preventing Mr. Williams from taking Teresa. Ms. Pollard should not be allowed to invoke the defense of qualified immunity for the physical restraint of Teresa Williams.

Appellant Pollard's continued detention of Teresa after it was clear that no emergency situation existed; her total lack of effort in providing Mr. and Mr. Williams notice that Teresa was in her custody; and, her efforts to physically

restrain Teresa from going to her father individually and together interfered with the Williams' custodial and familial rights to Teresa under the United States Constitution. This interference was conducted in a manner which violated clearly established laws of which an objectively reasonable person would have known. As a result, Ms. Pollard is not entitled to qualified immunity in this action.

Ms. Pollard is not entitled to any qualified immunity for her continued detention of Teresa beyond the time required for a brief initial investigation. Once she had enough information from which an objectively reasonable person could have ascertained that no emergency situation existed, and Teresa should have been released. The continued detention unconstitutionally interfered with the Williams' liberty interest in the custody of Teresa.

C. Summary

The Williams concede that DHS workers have a need to do a brief, preliminary interview of the minor child if they receive reports of abuse, even if unsubstantiated, to determine if there is a probable cause for an emergency situation; however, there must be a limit set as to how long a social worker can claim her entitlement to non-judicial non-emergency detention such as what occurred in this case.

III. A SOCIAL WORKER CANNOT CONSTITUTIONALLY RETAIN CUSTODY OF A MINOR CHILD FOR AN INDEFINITE AND UNSPECIFIED PERIOD OF TIME ON THE BASIS OF QUALIFIED IMMUNITY.

The Sixth Circuit has set a dangerous precedent by its decision. Without setting any guidelines or boundaries, it has allowed Ms. Pollard, and all other social workers or similarly related government agents, to claim qualified

immunity for non-judicial detention for any period of time once they have a right to conduct an initial brief interview which detains a minor child.

On receiving a report of child abuse, a social worker should be entitled to investigate; however, they should not be given unbridled discretion as to how to conduct the interview and how long to detain the child, which is exactly what the Sixth Circuit has permitted.

In this case, Ms. Pollard conducted a thirty minute interview; however, she detained Teresa for an additional 1 1/2 hours without notifying her parents and in fact had intended to detain Teresa longer. But for Mr. Williams forcible intervention, Ms. Pollard would have retained custody of Teresa without any basis for an emergency situation. The Sixth Circuit's opinion condoned such conduct.

Even criminals are entitled to more constitutional protection than that provided to the Williams by the Sixth Circuit. In *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 2889 (1968), a law enforcement officer was only permitted to *briefly* detain a criminal and search for weapons which could possibly harm an officer. In a child abuse situation, at least as allowed by the Sixth Circuit, a social worker can detain a child for whatever period of time the social worker deems reasonable, with total disregard to the parental rights involved, on the basis of qualified immunity.

In conformity with *Terry*, the United States Supreme Court should declare that all social workers are required to only briefly detain a child for purposes of a preliminary interview without parental approval or notice, and that they cannot claim qualified immunity for detention which

extends beyond the time necessary to conduct the initial preliminary interview.

In the present case, if the initial interview of Ms. Pollard for a period of thirty minutes was reasonable, her qualified immunity should cease after that time, particularly since no evidence of abuse was discovered. Her activities at the jail in forcibly attempting to retain custody of Teresa certainly could not fall under the umbrella of qualified immunity for the initial investigative interview. Neither should her continuous denial of Teresa her right to notify her parents, or the parents rights to know the whereabouts of their child.

Accordingly, the Williams at a minimum should be entitled to a trial to determine the actions of Ms. Pollard subsequent to the initial thirty minute interview.

V. THE UNITED STATES SUPREME COURT MUST SHOULD NOT ALLOW A SOCIAL WORKER TO CONTINUE POST-INTERVIEW DETENTION BASED SOLELY ON UNSUBSTANTIATED HEARSAY REPORTS OF POTENTIAL ABUSE.

The Sixth Circuit's decision has set another dangerous precedent by allowing a social worker to continue non-judicial detention of a minor child without parental notification when the sole and exclusive basis for post-interview and post-investigation detention is unsubstantiated hearsay claiming fear of severe punishment which is this case has been equated to "abuse."

Following the Sixth Circuit's logic in this case, a social worker will never violate the parents' constitutional rights in their children by detaining the child so long as there has been some allegation of threatened child abuse, despite the fact that an investigation and examination produce no

evidence to substantiate the allegations and the parents have no history of abusive behavior. This ruling will allow a social worker to operate with impunity, without regard for judicial oversight. As a result, the constitutional rights of both parents and children will inevitably be trampled, and there will be no recourse available to prevent it from happening again.

Again, common criminals are afforded greater rights than the Williams, for surely no arrest would occur or warrant would issue on the basis of an unsubstantiated hearsay allegation of a "potential crime;" yet, the Sixth Circuit will allow detention and interference with constitutional rights in a potential child abuse case based on an unsubstantiated hearsay allegation of "potential abuse."

The only facts upon which the Sixth Circuit appear to rely in determining that Ms. Pollard had a reasonable belief that an emergency situation existed was that both girls supposedly related to the school guidance counselor and the vice-principal's staff that they feared severe punishment and were afraid to go home; that someone supposedly relayed this information to the White County Department of Human Services; and that this information was further relayed to Ms. Pollard through the White County Department of Human Services. *Williams*, 44 F.3d at 435.[1]

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[1] Furthermore, the Sixth Circuit stated that the Petitioners "failed to produce evidence" to rebut the facts stated above. Williams, 44 F.3d at 435. However, the Sixth Circuit failed to note that Plaintiffs were not given an opportunity to conduct discovery to determine the accuracy of those facts or the nature of the transmission to the White County Department of Human Services and then to Ms. Pollard due to the fact that the District Court had prohibited

(continued...)

But what makes that decision more unnerving is the fact that after the unsubstantiated hearsay report was investigated, no facts were developed to establish a need for continued detention. This Sixth Circuit literally ignored the post-investigation physical confrontation by the Williams to regain custody of their child and contrary to the facts established in the record stated that the child was returned to the Williams. Contrary to the Sixth Circuit's erroneous understanding of the facts, Mr. Williams had to physically and forcibly remove his child from continued DHS custody. This confrontation was so severe that it caused Ms. Williams to suffer a required her to be hospitalized.

If a social worker is entitled to continue detention of a child every time she receives a report of potential abuse and--despite the facts developed in their interview and investigation--continued that detention based solely on the unsubstantiated hearsay report, the floodgate would be open to further unbridle the hands of social workers to retain custody of children on a mere unsubstantiated report of potential child abuse.

It would be catastrophic to parental rights if a social worker should receive an unsubstantiated report of "child abuse" and despite her investigation, be permitted to continue detention of that child based on that unsubstantiated report. This is particularly true given the recent public concerns that a child can manipulate their

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[1](...continued)
all discovery until after the appeal was heard. It would be singularly inequitable to grant summary judgment on facts which the Williams' have been rendered powerless to dispute due to the Court's ruling.

parents by threatening to turn them into the Department of Human Services.

Indeed, that is what is at the heart of this case. The "alleged child abuse" was the unsubstantiated fear of severe punishment to the minor child. If a social worker can interfere with a parent's rights every time a child fears punishment and that fear is reported as potential unsubstantiated "child abuse," the child will be able to manipulate the parents by using the system, and the social worker will be able to continue custody of the child based on the unsubstantiated hearsay report, regardless of the fact that an interview and investigation reveals no other basis for detention.

It is important that this Court declare that a social worker should be limited in detaining any child based on a unsubstantiated hearsay report of child abuse, except for the purpose of a brief investigatory interview only.

It is even more important that this Court declare that a social worker cannot interfere with parental rights upon the mere report of child abuse based upon fear of punishment. To do so would reinforce the child's belief that they can manipulate the system to take advantage of their parents, as well as accentuate the social worker's belief that they have unbridled power to take custody upon the report of child abuse based on fear of punishment alone.

VI. THE UNITED STATES SUPREME COURT MUST PROTECT THE CONSTITUTIONAL RIGHTS OF PARENTS TO KNOW THE WHEREABOUTS OF THEIR CHILDREN IF DETAINED OR TAKEN BY A GOVERNMENT AGENCY.

The Williams, as all parents would be, were terrified when their daughter did not come home as planned. They were at the Sheriff's Department filing a missing person's report while Ms. Pollard was unnecessarily detaining their daughter. A parent --even one who is under investigation for abuse--has a right to know the whereabouts of his or her minor child. This is particularly true if taken into custody by a government agency.

It is well established that in a non-emergency situation, the parent must be afforded his due process rights to notification and a pre-deprivation hearing before the state may take custody of his child. *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987). In an emergency situation, the law should require the social worker to notify the parent that their child is in custody and well taken care of so as to prevent needless concern, police intervention and other related problems. Such is particularly true in a case such as this when the detention involved a request by the child to contact her parents, as well as instruction by the vice principal to make contact while an interview of the child disclosed no need for detention.

Ms. Pollard's lack of notification to Don and Janie Williams that Teresa was in her custody was a violation of statutory law which any objectively reasonable person would have known, which provides a violation of due process established by statute. T.C.A. § 37-1-113 provides that a child may be taken into custody by a social worker of the department of human services if there are reasonable grounds to believe that the child is abused, that detention of

the child is required because the child is subject to an immediate threat to the child's health or safety to the extent that delay for a hearing would be likely to result in severe or irreparable harm, and there is no less drastic alternative to removal of the child from the custody of the child's parent which would reasonably and adequately protect the child's health.

Furthermore, T.C.A. § 37-1-115(a)(2) requires a social worker who takes a child into custody to give notice thereof, together with a reason for taking the child into custody, to a parent, guardian, or other custodian, and to the court. The legislature's intent for notice to be given to the parents of a child who is taken into custody is further evidenced by T.C.A. § 37-1-404(b) that requires every reasonable effort be taken by the department of human services to give "immediate notification" to the parent when a child has been taken into protective custody. As stated by section (b), the attempt to give "immediate notification" is to be contemporaneous with the commencement of the child protective investigation, which in this case was when Ms. Pollard first met with Teresa. In this case, this important due process right was ignored not only by Ms. Pollard but also by the Sixth Circuit.

Tennessee law mandates immediate notice to the parents when a child is taken into custody by the Department of Human Services, and Ms. Pollard is held to the knowledge of this statute. *Long v. Norris*, 929 F.2d 1111, 1115 (6th Cir. 1991). Ms. Pollard had Teresa in her custody for hours [despite her interview lasting only thirty minutes] without notifying her parents when a simple telephone call would have given them notice. As soon as Ms. Pollard arrived at the school, Teresa expressly asked Ms. Pollard to call her parents to let them know where she was and that she was safe. Ms. Pollard refused to do so, justifying her refusal on the ground that to do so would

allow Mr. and Mrs. Williams an opportunity to concoct a story concerning the alleged abuse.

An objectively reasonable person in Ms. Pollard's position would have realized that it was unlawful for her to continue to detain Teresa without notifying her parents. This is evidenced by the fact that Michael Johnson, vice principal of White County Alternative School and a government employee, advised Ms. Pollard no less than three times that she should call Teresa's parents and let them know where she was. Ms. Pollard refused to follow that advice.

An objectively reasonable social worker would have notified the Petitioners that she had her child in custody as required by Tennessee law. Ms. Pollard's lack of notification to Mr. and Mrs. Williams of their daughter in custody was a violation of the Williams' liberty interest in the custody of their daughter and violated statutory laws of which an objectively reasonable person should have known. Ms. Pollard is not entitled to qualified immunity for these actions.

The Court of Appeal's decision totally ignores Petitioners' rights to be notified of the location of their minor child. Although Ms. Pollard may have had the right to briefly detain the minor child for purposes of making a brief investigatory interview, she still nevertheless had the responsibility of notifying the parents.

VII. QUALIFIED IMMUNITY DOES NOT PREVENT THE APPLICATION OF INJUNCTIVE OR DECLARATORY RELIEF IN THIS MATTER PURSUANT TO 42 U.S.C. § 1983.

The Court of Appeal's decision indicates that the trial court should enter summary judgment in this matter.

Summary judgment as to all issues is inappropriate. At most, the Court's decision should provide that the matter is remanded for entry of summary judgment as to the any claim seeking damages only, but not as to the other issues which are remaining in this Court.

The trial court still has pending as part of this case, which is not part of this appeal, an amended complaint which asks for injunctive relief and declaratory relief. The Court of Appeal's decision if literally applied would similarly preclude further action relative to the equitable and declaratory relief requested.

The law of qualified immunity only allows for immunity from lawsuits seeking civil damages. It does not prevent a party from seeking injunctive or declaratory relief against a state official acting in her official capacity. *Will v. Michigan Department of State Police*, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989); *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908); *Daugherty v. Campbell*, 935 F.2d 780, 783, (6th Cir., 1991) *cert. denied*; *Wheaton v. Webb-Petett*, 931 F.2d 613, 620 (9th Cir. 1991); *Mangaroo v. Nelson*, 864 F.2d 1202, 1208 (5th Cir. 1989).

The Fifth Circuit Court of Appeals stated in *Mangaroo* that:

> "Although the eleventh amendment bars a suit against state entities and state officials who seek to 'impose a liability which must be paid from public funds in the state treasury,' a party may sue to have a federal court order state officials to conform their future conduct to the requirements of federal law. *See*, *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908). Qualified immunity has no relevance in this context. Thus, the district court's apparent belief that qualified immunity prevented an award of prospective injunctive

> relief in the form of an order compelling Pierre to perform some action is in error.

Mangaroo, 864 F.2d at 1208.

Furthermore, the Sixth Circuit in the matter of *Ohio Civil Service Employees v. Seiter*, 858 F.2d 1171 (6th Cir., 1988) stated: "Constitutional rights may yet be pursued in many other avenues, such as declaratory and injunctive relief. . . ." *Id.* at 1178.

Even assuming *arguendo*, that Ms. Pollard is entitled to qualified immunity for her actions concerning the detention of Teresa Williams, that does not also make her immune from injunctive and declaratory relief. *Id.* The Sixth Circuit ignored the fact that injunctive and declaratory relief was sought by the Petitioners in this matter and totally failed to address the matter. At the very least, this matter should be remanded to the district court for a determination as to the necessity for injunctive or declaratory relief.

These avenues are all the more important given the fact that qualified immunity may possibly exist. If total and complete immunity were the case for each matter involving qualified immunity, there would never be a determination of whether a public official violated protected rights when there is no clearly established constitutional right. In the doubtful situation, the offending public official can claim that he did not believe that he was violating a "clearly established constitutional right" and the court will never be in a position to declare otherwise.

Since qualified immunity extends only to damages, if the Court allows summary judgment on the issue of qualified immunity, the matter should be remanded for purposes of Plaintiffs pursuing declaratory judgment,

injunctive relief or other proceedings not inconsistent with its decision.

The United States Supreme Court must declare that the decision of the Sixth Circuit Court of Appeals in this matter is contrary to that of established law and the law established in other circuits.

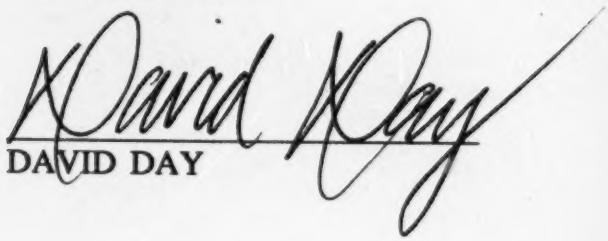
IV. CONCLUSION

Qualified immunity can be claimed only if the facts support an emergency situation upon which the interference of a parent's liberty to control their child is based. The facts of this case are not sufficient to support a situation allowing for qualified immunity.

For the reasons stated above, Petitioners would request that the writ of certiorari be granted, and that this Honorable Court reinstate the decision of the district court and reverse the decision of the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

LAW OFFICE OF
DAVID DAY,P.C.

By: 
DAVID DAY

APPENDIX

Opinion of the United States District Court
for the Middle District
of Tennessee

Opinion of the United States Court of Appeals
For the Sixth Circuit

Order
Denying Petition to Rehear from the
United States Court of Appeals
for the Sixth Circuit

Petition to Rehear and
Brief in Support

Constitutional Provisions
and Statutes

IN THE U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION

DONALD WILLIAMS, et al	)	
	)	
v.	)	#2-93-0009
	)	
DEBBIE POLLARD, et al	)	

ORDER

The defendants "Motion to Dismiss and/or Motion for Summary Judgment" filed in this court on 3/19/93 is hereby overruled.

/s/L. Clure Morton
L. Clure Morton
U.S. District Judge

This document was entered on the docket in compliance with Rule 68 and/or Rule 79(a), FRCP, on 7/9/93, By: p.o.n.

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 24

ELECTRONIC CITATION: 1995 FED App. 0031P (6th Cir.)
File Name: 95a0031p.06

No. 93-6442

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD WILLIAMS and wife, JANIE WILLIAMS, and TERESA WILLIAMS, by next friends, DONALD WILLIAMS and JANIE WILLIAMS,
Plaintiffs-Appellees,

v.

DEBBIE POLLARD and the TENNESSEE DEPARTMENT OF HUMAN SERVICES,
Defendants-Appellants.

ON APPEAL from the United States District Court for the Middle District of Tennessee

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Decided and Filed January 25, 1995

Before: JONES, SILER, and GODBOLD*, Circuit Judges.

SILER, Circuit Judge. Defendants, Debbie Pollard and the Tennessee Department of Human Services, appeal the district court's denial of their motions for summary judgment. This case falls under the appellate jurisdiction of this court pursuant to the collateral order doctrine. *See Rich v. Mayfield Heights*, 955 F.2d 1092, 1094 (6th Cir. 1992). The issue before the court is whether Pollard, a social worker, is protected by qualified immunity. For reasons stated herein, we find that she is.

I.

On October 29, 1992, Teresa Williams accompanied her cousin, Karen Lewis, to the counselor's office at the White County Alternative School. School officials testified that both girls claimed to be afraid to go home because they were being abused. The plaintiffs, however, claim that only Karen was afraid to go home, and that Karen had persuaded Teresa to accompany her to the counselor's office. The school's guidance counselor, Sandra Sparkman, interviewed the girls. Sparkman stated that both girls refused to go home and chose to stay and wait for a Department of Human Services counselor.

A confidential referral was then made to the Tennessee Department of Human Services, which, in turn, requested that one of its counselors, Pollard, go to the school to investigate the matter. Pollard arrived at the school at 3:47 p.m. and interviewed the girls. There is some dispute over whether Teresa told Pollard that she was afraid to go home for fear of abuse. The record also indicates some dispute as to whether Teresa informed Pollard that she had once been the victim of sexual abuse.

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*The Honorable John C. Godbold, Circuit Judge of the United States Court of Appeals for the Eleventh Circuit, sitting by designation.

Pollard waited with the girls at the school until 5:55 p.m., when a law enforcement officer arrived to transport the girls to a safe place, the White County Jail, pending an interview with the girls' parents. Teresa stated that she asked Pollard to call her parents to tell them where she was, and Pollard refused. Upon arriving at the sheriff's office, Pollard was confronted by Teresa's parents, who took their daughter home.

The Williams family brought suit against Pollard and the Tennessee Department of Human Services, alleging a violation of their constitutional right to family integrity. They also asserted pendent state law claims against Pollard for false imprisonment, assault and battery, defamation, and intentional infliction of emotional distress.

Pollard claims that the district court erred in holding that she was not entitled to qualified immunity as a matter of law. The issue of qualified immunity is a question of law to be resolved by the judge, not the jury. *Heflin v. Stewart County*, 958 F.2d 709, 717 (6th Cir.), *on partial rehearing*, 968 F.2d 1 (6th Cir.), *cert. denied*, 113 S. Ct. 598 (1992). It is, therefore, reviewable *de novo*, with no deference due the district court's conclusion. *See Walton v. Southfield*, 995 F.2d 1331, 1335 (6th Cir. 1993) (*de novo* review); *Ramirez v. Webb*, 835 F.2d 1153,1156 (6th Cir. 1987) (no deference due).

II.

The critical question is whether Pollard is entitled to qualified immunity as a matter of law. In order to survive a motion for summary judgment based on qualified immunity, plaintiffs must effectively pass two hurdles:

> First, the allegations must state a claim of the violation of clearly established law. Second, the plaintiff must present evidence sufficient to create a genuine issue as to whether the defendant in fact committed the acts that violated the law.

Adams v. Metiva, 31 F.3d 375, 386 (6th Cir. 1994), *citing Russo v. City of Cincinnati*, 953 F.2d 1036, 1043 (6th Cir. 1992).

Plaintiffs allege that Pollard violated their liberty interest in the integrity of their family by interfering with the custody of their child. Parents' liberty interest in the custody of their children is a clearly established constitutional right subject to due process protection. *Hooks v. Hooks*, 771 F.2d 935, 941 (6th Cir. 1985). This liberty interest is not absolute, however, but is subject to exceptions. Assuming, arguendo, that the Williams' liberty interest in custody of their child is clearly established and not subject to an exception under the circumstances presented, the determinative issue is whether plaintiffs have alleged sufficient facts supported by sufficient evidence to indicate that Pollard's actions were objectively unreasonable in light of plaintiffs' clearly established constitutional rights. *Adams v. Metiva*, 31 F.3d at 387.

If the material facts regarding the objective reasonableness of Pollard's actions had been disputed, then the trial court would have been correct in holding that the issues of fact must go to the jury, with the ultimate question of qualified immunity, of course, then to be determined by the court. *See Heflin v. Stewart County*, 958 F.2d 709, 717 (6th Cir. 1992). Defendant, however, has provided undisputed facts in support of a finding that her actions were objectively reasonable.

The plaintiffs seem to focus on Teresa's claim that she never told Pollard that she had been the victim of abuse. The plaintiffs failed to produce evidence, however, to dispute defendant's evidence that: (1) both girls, Teresa and Karen, reported to the vice-principal's staff that they were being abused at home; (2) in a conversation with the school's guidance counselor, Sandra Sparkman, "[b]oth girls indicated they feared severe punishment if they went home...and stated that they would run away if sent home"; and (3) the secretary of the White County Department of

Human Services "received a referral that Teresa Williams and another girl were alleging their parents had abused them and were refusing to go home," immediately after which the secretary "paged Debra Pollard Ward and advised her of the referral."

A careful review of the evidence offered by plaintiffs reveals that they have not produced sufficient evidence to create a genuine issue as to whether Pollard lacked reason to believe that Teresa had been a victim of or feared abuse. A reasonable social services worker in Pollard's position would have found that an emergency situation existed warranting temporary interference with the Williams' custody of their daughter. Viewing the evidence in a light most favorable to the plaintiff, we find that it is objectively reasonable for a social worker receiving an abuse referral from school officials to believe that interviewing the child for two and one-half hours without notifying the parents did not violate a federally protected right. Pollard is, therefore, entitled to qualified immunity as a matter of law.

III.

Plaintiffs' claims against the Tennessee Department of Human Services and their pendent state claims against Pollard have been abandoned on appeal, so those parts of the appeal are dismissed.

IV.

The judgment of the district court is **REVERSED** and this matter is **REMANDED** for the court to grant summary judgment for Pollard.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD WILLIAMS, ET AL,	)	Filed Mar 09 1995 Leonard Green, Clerk
Plaintiffs-Appellees	)	
v.	)	ORDER
DEBBIE POLLARD; TENNESSEE DEPARTMENT OF HUMAN SERVICES	)	
Defendants-Appellants/	)	

BEFORE: JONES and SILER, Circuit Judges; and GODBOLD [sic],* Circuit Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/Leonard Green
Leonard Green, Clerk

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*Hon. John C. Goldbold, United States Circuit Judge for the Eleventh Circuit, sitting by designation

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD WILLIAMS, and wife JANIE WILLIAMS, and TERESA WILLIAMS by next friends, DONALD WILLIAMS, and JANIE WILLIAMS,	)	No.93-6442
Plaintiffs-Appellees/ Petitioners	)	
v.	)	District Court No. 2-93-0009
DEBBIE POLLARD, TENNESSEE DEPARTMENT OF HUMAN SERVICES	)	
Defendants-Appellants/ Respondents	)	

PETITION FOR REHEARING
PETITION TO REHEAR IN BANC
AND PETITION TO STAY MANDATE

Now comes Petitioner, through counsel, and pursuant to Rule 40 of the Federal Rules of Appellate Procedure and petitions this court for rehearing based on the fact that the Court either overlooked or misapprehended the following facts and issues:

a. Failure of Debbie Pollard and the Tennessee Department of Human Resources to notify the parents or to allow the minor child to contact her parents; and

b. Failure to release the minor child voluntarily to the Plaintiff parents at the jail after the interview when Defendant Pollard found no grounds for an emergency situation.

c. Failure to remand the case for further proceedings, including the claim for declaratory and injunctive relief, rather than allowing summary judgment to terminate the case.

Attached is a brief which presents Petitioner's argument for rehearing.

As a separate motion, Petitioner moves and suggest to this Court, pursuant to Rule 35(c) of the Federal Rules of Appellate Procedure, to rehear this appeal in banc. This appeal regards a constitutional question of exceptional importance, the resolution of which will determine a parents right to the custody, control, and discipline of their children, as well as the right of the parent to know when the child is in custody and the right of a minor child to contact a parent when in custody. Considering the exceptional importance of this question, a consideration by a full court is necessary.

The certificate required by Rule 14 of the Rules of the United States Court of Appeals for the Sixth Circuit is attached.

Because of the Petition to Rehear and the suggestion to rehear in banc, the Petitioners would request a stay of the mandate pursuant to Rule 41 of the Federal Rules of Civil Procedure.

This 3rd day of February, 1994.

Respectfully submitted,

LAW OFFICE OF DAVID DAY,P.C

By: /s/David Day
DAVID DAY

By: /s/Robert Durham
ROBERT DURHAM

312B East Broad Street
Cookeville, Tennessee
(615) 528-7002

Attorneys for
Appellee/Petitioner

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD WILLIAMS, and wife JANIE WILLIAMS, and TERESA WILLIAMS by next friends, DONALD WILLIAMS, and JANIE WILLIAMS,	)	No.93-6442
Plaintiffs-Appellees/ Petitioners	)	
v.	)	District Court No. 2-93-0009
DEBBIE POLLARD, TENNESSEE DEPARTMENT OF HUMAN SERVICES	)	
Defendants-Appellants/ Respondents	)	

BRIEF IN SUPPORT OF PETITION FOR REHEARING AND PETITION TO REHEAR EN BANC

I. ISSUES

The Appellees/Petitioners would respectfully submit to the Court that the following issues were overlooked or ignored by the Court:

A. Following the interview by Debbie Pollard, there was no emergency situation requiring further detention.

B. Debbie Pollard had a duty to notify the Plaintiff parents of the whereabouts of their minor child and/or allow the minor child to contact her parents when requested.

C. Summary judgment should only apply to the issue of damages and not to any claim for declaratory judgment or injunctive relief.

II. ISSUES

A. NO EMERGENCY SITUATION EXISTED FOLLOWING THE INTERVIEW

This Court found that two and a half hours was a reasonable time for Debbie Pollard to conduct an interview of the minor child. While the Plaintiffs admitted in their brief and in oral argument that Defendant Pollard had a duty and a right to make a preliminary interview of the children, they respectfully disagree with the duration allowed.

The Court however either overlooked or ignored the following facts which are significant following the interview:

a. The interview of Defendant Pollard produced no facts indicating an emergency situation which would require further detention of the minor child.

b. At the jail, Defendant Pollard stated her intention to keep the children and attempted to restrain Plaintiffs from obtaining custody of their minor child following the interview which disclosed no emergency situation.

c. Plaintiff Don Williams had to forcefully and physically remove his minor child from the custody of the Department of Human Services. There was no voluntary delivery.

d. The wrongful conduct of Defendant Pollard following the interview and no facts establishing an emergency situation resulted in actual damages to Plaintiffs, including the

seizure suffered by Plaintiff Janie Williams at the jail immediately following the confrontation with Defendant Pollard.

Cf. *Centanni v. 8 Unknown Officers*, 15 F.3rd 587 (Sixth Circuit 1994) [where court held that even a brief detaining is a violation of constitutionally protected rights].

While Plaintiffs concede and have always conceded that a brief initial interview was required, this Court either overlooked or ignored Plaintiffs' claim as relates to Defendant Pollard's actions at the Sheriff's department following the interview which generated no facts establishing an emergency situation.

The fact that Defendant Pollard was provided hearsay information through a Department of Human Services Secretary prior to her investigation that Teresa had complained of abuse does not support a finding of an emergency situation after a face to face interview which established no such facts.

For this Court's ruling to extend to the post-interview deprivations would only suggest that an emergency situation can exist regardless of what may be learned in the course of an investigation. If a hearsay statement told to Defendant Pollard by the vice principal (which was not even available to rebuttal or impeachment by discovery since discovery had been precluded) is enough to conclude that an emergency situation exists, a social worker will be at liberty to remove a child from the custody of their parents without an interview anytime someone identifies the child as a target of abuse. The social workers responsibility to do an initial investigation will erode away because, as seen in the decision of this Court, the investigation will contribute nothing to the emergency situation determination. As also seen in the case at bar, the information will not have to be accurate or correct in order for the social worker to rely on it for her determination. In the interview Ms. Pollard learned that the accusation of abuse was not true, but she continued to detain Teresa. If the decision by this Court is not reconsidered, a dangerous liberal policy will be given to social workers to deploy in determining emergency situations--a policy which will allow the violation of constitutional rights held by parents and children alike.

B. DEFENDANT HAD A DUTY TO NOTIFY THE PARENTS

This Court's decision ignores totally Plaintiffs' rights to be notified of the location of the minor child. Although Defendant Pollard may have had the right to detain the minor child for purposes of making a brief investigatory interview, she still nevertheless had the responsibility of notifying the parents.

This Court failed to recognize that the parents were terrified that their daughter was missing. At the time Defendant Pollard took the Plaintiffs' minor child to the Sheriff's department, Plaintiffs were already frantic and placing a missing child report.

This Court also overlooked or ignored the fact that the principal had asked Defendant Pollard to call the parents, which she refused. This Court also overlooked or ignored the fact that Defendant Pollard refused the requests of the minor child to contact her parents.

By overlooking this important right, this Court's opinion gives a juvenile criminal-- under his or her **Miranda** rights-- more liberty than an innocent minor child in terms of notifying his or her parents. One of the rights complained of in this case is the refusal of Defendant Pollard to allow Plaintiff Teresa Williams to notify her parents when she made the requests. If Plaintiff Teresa Williams, as a minor charged with a juvenile offense, had made such a request, there is not doubt but that she would be allowed to contact her parents. It escapes reason that a child who by virtue of a hearsay claim of possible abuse--who is found not to be abused--is denied the same rights granted to a juvenile criminal.

There is no acceptable reason to interfere with a minor child who wants to contact his or her parent. There is no acceptable reason for allowing a Department of Human Services Worker to keep hidden from a parent their child's whereabouts. This Court's decision should have addressed these issues and found

that they were violated by the Defendant regardless of her right to conduct an interview.

C. SUMMARY JUDGMENT SHOULD EXTEND ONLY TO THE ISSUES OF DAMAGES, BUT NOT FURTHER

The Court's decision indicates that the trial court should enter summary judgment in this matter. Summary judgment as to all issues is inappropriate. At most, the Court's decision should provide that the matter is remanded for entry of summary judgment as to the any claim seeking damages only, but not as to the other issues which are remaining in this Court.

The trial court still has pending as part of this case, which is not part of this appeal, an amended complaint which asks for injunctive relief and declaratory relief. A filed copy of this Motion to Amend Complaint is attached hereto as Exhibit 1, and the motion was granted in open court at the hearing on the Motion for Summary Judgment. This Court's decision if literally applied would similarly preclude further action relative to the injunctive and declaratory relief requested.

The law of qualified immunity only allow for immunity from lawsuits seeking civil damages. *Daugherty v. Campbell*, 935 F.2d 780, 783, (6th Cir., 1991) *cert. denied*, 117 S.Ct. 939, 117 L.Ed2d 100. If total and complete immunity were the case for each matter involving qualified immunity, there would never be a determination of whether a public official violated protected rights when there is no clearly established constitutional right. In the doubtful situation, the offending public official can claim "no clearly established constitutional right" and the court will never be in a position to declare otherwise.

The Sixth Circuit in the matter of *Ohio Civil Service Employees v. Seiter*, 858 F.2d 1171 (6th Cir., 1988) stated: "Constitutional rights may yet be pursued in many other avenues, such as declaratory and injunctive relief. . . ." Id. at 1178.

Since qualified immunity extends only to damages, if the Court allows summary judgment on the issue of qualified immunity, the matter should be remanded for purposes of Plaintiffs pursuing declaratory judgment, injunctive relief or other proceedings not inconsistent with its decision.

III. CONCLUSION

Based on the foregoing, the Plaintiffs/Appellees would request that:

1. The Court rehear this matter en banc and reconsider its decision.

2. The Court reconsider its decision as to post-interview activities and allow a trial to proceed as to the matters following the initial interview by Defendant Pollard.

3. The Court reconsider its decision as to Defendant Pollard's interference with Plaintiff Teresa William's rights to contact her parents while in custody of Defendant Pollard.

4. The Court reconsider its decision as to Defendant Pollard's refusal to contact Plaintiffs about the whereabouts of their minor child.

5. The Court reconsider its decision as to the extent of qualified immunity and order that qualified immunity only applies to the damages claim, but not to any other relief which the Plaintiffs may seek.

This 3rd day of February, 1995.

Respectfully submitted,

LAW OFFICE OF DAVID DAY,P.C

By: /s/David Day
DAVID DAY

By: /s/Robert Durham
ROBERT DURHAM

312B East Broad Street
Cookeville, Tennessee
(615) 528-7002

Attorneys for
Appellee/Petitioner

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const., Amend IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., Amend. XIV, Sec. 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 Civil Action for Deprivation of Rights:

Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

T.C.A. § 37-1-113 [Juvenile] Taking into custody--Grounds.

(a) A child may be taken into custody:

(1) Pursuant to an order of the court under this part;
(2) Pursuant to the laws of arrest;
(3) By a law enforcement officer, social worker of the department of human services, or duly authorized officer of the court, if there are reasonable grounds to believe that the conditions specified in §37-1-114(a)(2) exist; or . . . .

T.C.A. § 37-1-115(a)(2) [Juvenile] Custody--Release to proper party--Warrant for custody

(a) A person taking a child into custody shall within a reasonable time:
* * *
(2) Bring the child before the court or deliver such child to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. A person taking a child into custody shall give notice thereof, together with a reason for taking the child into custody, to a parent, guardian or other custodian and to the court. If the child is taken into custody pursuant to the provisions of §37-1-113(a)(3) prior to the filing of a petition, a petition under §37-1-120 shall be filed as soon as possible but in no event later than two (2) days after the child is taken into custody excluding Saturdays, Sundays and legal holidays.

T.C.A. § 37-1-404(b) Retention of custody of child by hospital or physician--Protective custody--

(b) Any person taking a child into protective custody shall immediately notify the department, whereupon the department shall immediately begin a child protective investigation in accordance with the provisions of §37-1-606, and make every reasonable effort to immediately notify the parents, legal guardian or legal custodian that such child has been taken into protective custody.